IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

CIVIL APPLICATION NO.2903 of 2006.
IN
FIRST APPEAL NO.1494 OF 2006.

Mr.Fabian Philip Dias & anr. ... Applicants.
Versus.
Dunstan Philip Dias. ... Respondent.

Shri Pandya for the Applicants.

Shri A.J,.Almeda for the Respondent.

CORAM : ABHAY S.OKA, J.

DATED : 26th Sept., 2007.

P.C.:

1. Heard the learned Counsel appearing for the parties. The First Appeal has been admitted for final hearing. The suit filed by the Applicant has been dismissed and a decree has been passed in the counter claim filed by the Respondent. There is ad-interim order passed by this Court dated 26th July 2006 directing the parties to maintain status-quo. The continuation of the said order is opposed by the learned Counsel appearing for the Respondent by pointing out various findings recorded by the trial Court. He submitted that there is a clear finding of fact recorded by the trial Court that the Applicants were not in possession of the suit property on the date of institution of the suit. He has invited my attention to the finding which is recorded as to in what manner the

possession was sought to be taken over by the Applicants. He submitted that in view of the said conduct of the Applicant as found by the trial Court, no case is made out for granting of any equitable relief in favour of the Applicant.

2. I have considered the submissions. The finding of the trial Court will have to be tested and therefore the First Appeal has been admitted. There was a temporary injunction operating during the pendency of the suit in favour of the Applicant. The limited ad-interim order granted by this Court is directing both the parties to maintain status-quo. As the finding recorded by the trial Court is the subject matter of challenge in the Appeal, considering the facts and circumstances of the case, ad-interim relief will have to be continued.

3. Hence the Civil Application is disposed of by directing that the ad-interim order dated 26th July 2006 will continue to operate as interim relief till final disposal of the appeal. Hearing of the Appeal is expedited.

Judge.